

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

AUG 29 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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ON BEHALF OF PETITIONER:

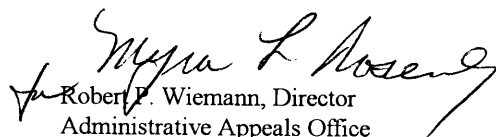
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a lay minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a lay minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits what purport to be tax documents intended to establish the beneficiary's employment from 1997 onward.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a lay minister throughout the two-year period immediately preceding that date.

The I-360 petition form has a space designated for the beneficiary’s Social Security number. In this space, the petitioner wrote “000-00-0000.” Bureau records indicate that the beneficiary had applied for adjustment of status in 1994, and at that time he listed a Social Security number on his Form I-485 adjustment application. (That application was denied because no immigrant visa petition had been approved on the beneficiary’s behalf, and therefore he had no lawful basis to adjust status.)

In a letter dated April 19, 2001, Rev. [REDACTED] states that the beneficiary “has been serving the church and its members voluntarily since 1991.” Rev. [REDACTED] asserts “[the beneficiary] in his position as a Lay Minister will be a full time employee, he will work for 40 hours per week and he will be paid \$500.00 per week.”

The director instructed the petitioner to submit further evidence regarding the beneficiary and his position. The petitioner’s response included a cover letter from prior counsel, reading in part “it is requested that the case may please be approved enabling the applicant to start using the services of the beneficiary on a full time basis.” Rev. [REDACTED] stated that the church is “prepared to offer [the beneficiary] full time employment,” and asserted “[w]e are prepared to pay [the beneficiary] a starting salary of \$500.00 per week for the forty hours which he will work.”

Rev [REDACTED] statements, regarding what the church "will" pay the beneficiary, and that the beneficiary has worked "voluntarily," indicate that the beneficiary worked without pay prior to the filing of the petition.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

The director denied the petition, stating "the beneficiary does not have a Social Security Number and without copies of the beneficiary's W-2s and Individual Income Tax Returns, there is no evidence the beneficiary ever worked for the petitioner." Therefore, the director concluded,

“[t]he record does not establish that the beneficiary has the required two years of experience in the religious occupation.”

On appeal, counsel states “[t]he INS stated in its decision that the beneficiary does not have a Social Security number, which is not true.” It remains that the petitioner had stated the beneficiary’s Social Security number as 000-00-0000, which is not a valid number. The director’s error was the direct result of erroneous information supplied by the petitioner under penalty of perjury.

Counsel continues that the director “also stated that he had no copies of tax returns and W2 forms, which is also incorrect. We have submitted W2 forms from 1997 to 2001 and joint tax return copies with the appeal and they clearly indicate that the beneficiary was working for the petitioner.” The tax documents submitted on appeal were not in the record at the time the director rendered the decision. The director did not err in failing to consider evidence that had not yet been submitted.

The submission does not, in fact, include Form W-2 Wage and Tax Statements. Instead, the submission includes photocopies of handwritten Form 1099-MISC Miscellaneous Income statements, typically issued to contractors rather than to employees. The Forms 1099-MISC reflect the following claimed income from the petitioning church:

1997	\$7,256.25
1998	7,900.00
1999	8,599.84
2000	9,600.00
2001	9,600.00

Counsel states “[t]he beneficiary was working in a religious position for the petitioner as a paid employee, not merely voluntarily, for the previous two years and more. He was paid \$9,600 in money as reported in his W2 forms and was also provided with approximately \$10,000 from the petitioner as compensation for his work, which he used to help pay the mortgage on the home he and his wife own.”¹ There is no support of any kind for counsel’s claim of additional payments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also fails to explain why the additional claimed \$10,000 was not reported to the Internal Revenue Service.

The petitioner submits copies of what purport to be the beneficiary’s federal and state income tax returns from 2000 and 2001. The documents identify the beneficiary’s occupation as “parish

¹ Counsel distinguishes between the \$9,600 “paid . . . in money,” and the \$10,000 “compensation . . . which [the beneficiary] used to help pay the mortgage.” If the additional \$10,000 was not “paid . . . in money,” then it is not readily clear how it could have been used to pay a mortgage. If, on the other hand, it was “paid . . . in money,” then there is no basis for counsel’s arbitrary distinction between that \$10,000 and the other \$9,600, and counsel’s claim necessarily implies the petitioner’s deliberate underreporting of its payments to the beneficiary.

minister.” The copies are unsigned, and they have not been certified by the Internal Revenue Service. Therefore, there is no evidence that the petitioner actually filed these tax returns, containing this information. Also, the tax returns are joint returns purportedly filed by the beneficiary and his spouse, identified as an “administrative assistant.” Because the tax returns (if authentic) report her income as well as his, we cannot determine how much of the total income claimed on the return derives from payments made to the beneficiary by the petitioning church.

The new claim on appeal that the beneficiary worked “as a paid employee, not merely voluntarily,” contradicts Rev. [REDACTED]’s earlier assertion that the beneficiary “has been serving the church and its members voluntarily since 1991.” Because of these contradictory and mutually exclusive claims, the uncertified tax documents submitted on appeal are suspect. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).²

Because the materials submitted on appeal contradict the petitioner’s earlier claims, and thus serve only to raise serious questions of credibility, the petitioner has not overcome the stated grounds for denial and the petition cannot be approved based on the record as it now stands.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² We note that the Form 1099-MISC states that the information contained on the form “is being furnished to the Internal Revenue Service” (IRS). If the petitioner is unable to produce verifiable, first-hand proof from the IRS itself to show that the petitioner did indeed submit this information to the IRS in a timely manner (i.e., immediately after the conclusion of each respective tax year), and that the beneficiary did indeed report this income on timely-filed income tax returns, then we cannot afford any credibility whatsoever either to the tax forms, or to the immigrant petition the forms are intended to support.